THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on :23.05.2007

+ **WP (C) 1891/2007**

JAIN KEROSENE OIL DEPOT & OTHERS …Petitioners

-versus-

THE COMMISSIONER FOOD & SUPPLIES DELHI AND ANOTHER …Respondents

WITH

WP(C) 3118/2007

MAHADEV KEROSENE OIL DEPOT & ANOTHER …Petitioners

-versus-

THE COMMISSIONER FOOD & SUPPLIES DELHI AND ANOTHER …Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Nitin Sehgal.
For the Respondent Nos 1&2 : Mr Ramesh K Sharma.

CORAM:-
HON'BLE MR. JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J. (ORAL)

1. These two writ petitions relate to identical issues and, therefore, are being taken up together. The respondents have not filed their counter affidavits despite opportunity. However, the learned counsel appearing on behalf of the respondents, the Commissioner, Food and Supplies as well as the Assistant

Commissioner, Food and Supplies, Government of NCT of Delhi, submits that he has brought the record of the case.

2. The grievance of the petitioners is that the respondents are shifting kerosene oil depots from other areas to the notified areas of Shahbad Dairy and Sector – 20, Rohini which fall under circle-21 when the card position in the said circle does not permit the introduction of any fresh KOD. The learned counsel for the petitioners appearing in the WP(C)1891/2007 drew my attention to an order passed by the Commissioner, Food and Supplies on 17-18/10/2006. That order was passed in an appeal filed by Shri Ram Babu Gupta, Proprietor of Ram Babu KOD who held a licence No.2141/81 in Circle-4, 1812, Kotla Mubarakpur, New Delhi. The said Ram Babu KOD sought the issuance of necessary directions to allow shifting of his KOD from Circle–4 to Circle-21 at the premises No. A-158, Shahbad Dairy, Delhi. While disposing of the said appeal, the Commissioner, Food and Supplies observed as under :

> "A report in this regard was obtained from the Asstt. Commissioner (North West). He has stated shifting of a PDS outlet from one Circle to another is treated as opening of a new PDS outlet and that the case of the appellant was considered and rejected by the department as the ground of shifting was not found to be justified in the light of instructions of the department in this regard contained in Circular No.F.3(14)/2002/F&S/Policy/30 dated 31.7.2002. As per this Circular 'the card position is the most important aspect which is often not considered in right prospective as it is the number of card holders which always justified the opening of a new PDS outlet'. However, a perusal of record reveals that in the instant case card position is not sufficient in the transferee

> circle to accommodate a new KOD. In view of this it would not be possible to accede to the request of the appellant to shift his KOD to Circle-21.
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> I have perused the records of the case produced before me. I have also considered the facts of the case. In the facts and circumstances of the case, it would be appropriate to remand the case to the Asstt. Commissioner (New Delhi) from where the appellant is requesting for shifting of his KOD, with the direction to rationalize the card position amongst the KOD holders in Circle-4 and attach some more cards with the KOD of the appellant so that his KOD does not become economically unviable."
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> (Underlining added)

3. A plain reading of the above observation and finding indicates that the card position is not sufficient in the transferee circle (i.e., Circle-21) to accommodate a new KOD. It is on this specific finding that the request of Ram Babu KOD to shift to Circle-21 was rejected.

4. All the petitioners in these writ petitions are the proprietors of kerosene oil depots in Circle-21. They are aggrieved by the fact that the respondent Nos 1 and 2, despite the said order dated 17-18/10/2006, are transferring and permitting shifting of KODs from other circles to circle-21. An example of such an order is in the very case of Ram Babu KOD. The learned counsel for the petitioners drew my attention to the order dated 30.11.2006 which was passed by the Assistant Commissioner (NW) Food and Supplies and the same reads as under :

> "OFFICE OF THE ASSISTANT COMMISSIONER (NORTH-WEST)):F&S DEPTT, GOVT OF NCT OF DELHI : CSC : CC-BLOCK, SHALIMAR BAGH, DELHI -88

No. F. 6/AC(NW)F&S/2006/4974-4979 Dated : 30.11.06

ORDER

M/s Ram Babu K. Oil Depot, Licence No.-2141/81, situated at 1812 Kotla Mubarak Pur, New Delhi under Circle No.4 is hereby allowed to shift the Business Premises from the above referred address to A-158 Shahabad Dairy New Delhi, under circle No.-21 and also allowed to run the said KOD with immediate effect.

M/s Ram Babu K. Oil Depot Licence No.2141/81 is hereby directed to deposit an amount of Rs.5000/- (Rupees Five thousand only) as administrative charges with DDO/Cashier of Distt. North West office (F&S), Govt of NCT of Delhi within five days of issue of this order.

This issues with prior approval of Hon'ble MFS/C.F.S.

(SURENDER KUMAR)
ASSISTANT COMMISSIONER (NEW)"

5. The said order indicates that Ram Babu KOD has been allowed to shift the kerosene oil depot from Circle-4 to Circle-21. This is clearly contrary to what the Commissioner had directed in the order dated 17-18/10/2006. Similar orders have also been passed by the other Assistant Commissioners in respect of other KODs seeking transfer to Circle No.21. All these orders indicate that they have been issued with the prior approval of the Hon'ble Minister for Food and Supplies and / or the Commissioner for Food and Supplies. Therefore, it would be futile to remand the matter to the Commissioner of Food and Supplies because the impugned orders permitting the shifting of kerosene oil depots to

Circle-21 have been issued after obtaining the approval of the said Commissioner of Food and Supplies.

6. The learned counsel appearing for the respondent Nos 1 and 2 was unable to show from the record as to whether the card position in Circle-21 changed so dramatically within one month to have altered the factual position noted in the order dated 17-18/10/2006 so as to legitimize the transfer / shifting of further KODs to Circle-21. In view of this, I have no alternative but to set aside the orders of transfer which are impugned in these writ petitions, primarily because of the finding recorded by the Commissioner, Food and Supplies, which has not been challenged before any forum, to the effect that the card position in circle-21 does not permit for the introduction of any new KOD. This finding was recorded in October 2006. The shifting orders which have been issued in November, 2006 onwards are clearly contrary to this finding.

7. The persons who had sought shifting of their kerosene oil depots to Circle-21 and who have been permitted by the orders impugned herein, will be permitted to operate their kerosene oil depots from their existing places.

These writ petitions stand disposed of. No costs.

BADAR DURREZ AHMED
(JUDGE)

May 23, 2007
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